

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68 and 2013 Iowa Acts, Senate File 295, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 80, “Property Tax Credits and Exemptions,” Iowa Administrative Code.

The subject matter of new rule 701—80.30(85GA,SF295) is the business property tax credit. This rule is intended to implement 2013 Iowa Acts, Senate File 295 (new Iowa Code chapter 426C), which creates a business property tax credit available to certain properties classified as commercial, industrial, or railway.

The proposed rule will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this rule would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed rule may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 30, 2013, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed rule on or before December 17, 2013. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

A public hearing will be held on December 17, 2013, from 10 to 11:30 a.m. in the Wallace State Office Building, First Floor Auditorium, 502 E. 9th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rule.

After analysis and review of this rule making, no adverse impact on jobs has been found.

This rule is intended to implement 2013 Iowa Acts, Senate File 295.

The following amendment is proposed.

Adopt the following new rule 701—80.30(85GA,SF295):

**701—80.30(85GA,SF295) Business property tax credit.**

**80.30(1) Definitions.** For purposes of this rule, the following definitions shall govern.

“*Contiguous parcels*” means any of the following:

1. Parcels that share a common boundary. There is a rebuttable presumption that parcels separated by a roadway, alley, or waterway share a common boundary. The burden of proof shall be upon the property owners to provide evidence or verification that parcels separated by a roadway, alley,

or waterway do not share a common boundary. Parcels owned to the middle of a road, river, alley, or railway in fee simple title are considered to share a common boundary.

2. Parcels within the same building or structure regardless of whether the parcels share a common boundary.

3. Permanent improvements to the land that are situated on one or more parcels of land that are assessed and taxed separately from the permanent improvements if the parcels of land upon which the permanent improvements are situated share a common boundary. This arrangement is more commonly referred to as buildings or permanent improvements upon leased land.

*“Dwelling unit”* means an apartment, group of rooms, or single room that is occupied as separate living quarters, or, if vacant, is intended for occupancy as separate living quarters, in which a tenant can live and sleep separately from any other persons in the building. A vacant dwelling unit that does not have active utility services is not considered to be intended for occupancy. Dwelling units do not include hotels, motels, inns, or other buildings where rooms are rented for less than one month.

*“Multiresidential property”* means, for valuations established on or after January 1, 2015, any of the following types of property:

1. Mobile home park as defined in Iowa Code section 435.1.

2. Manufactured home community and land-leased community as defined in Iowa Code sections 335.30A and 414.28A and 2013 Iowa Acts, Senate File 295, section 28.

3. Assisted living facility as defined in Iowa Code section 231C.2. Assisted living facility also includes:

- A health care facility as defined in Iowa Code section 135C.1;
- A child foster care facility under Iowa Code chapter 237; or
- Property used for a hospice program as defined in Iowa Code section 135J.1.

4. Property primarily used or intended for human habitation containing three or more separate dwelling units.

5. That portion of a building that is used or intended for human habitation and a proportionate share of the land upon which the building is situated, regardless of the number of dwelling units located in the building, if the use for human habitation is not the primary use of the building and such building is not otherwise classified as residential property.

Multiresidential property does not include hotels, motels, inns, or other buildings where rooms or dwelling units are usually rented for less than one month.

*“Parcel”* means each separate item shown on the tax list, manufactured or mobile home tax list, schedule of assessment, or schedule of rate change or charge. For fiscal years beginning on or after January 1, 2016, “parcel” also means that portion of a parcel assigned to be commercial property, industrial property, or railway property pursuant to 2013 Iowa Acts, Senate File 295, section 28.

*“Person”* means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

*“Property unit”* means contiguous parcels all of which are located within the same county, with the same property tax classification, are owned by the same person, and are operated by that person for a common use and purpose.

**80.30(2) In general.** Except as provided in subrule 80.30(8), for property taxes due and payable in fiscal years beginning on and after July 1, 2014, one business property tax credit is available to each parcel of land classified and taxed as commercial property, industrial property, or railway property unless the parcel is part of a property unit for which a credit is claimed. For property taxes due and payable in fiscal years beginning on and after July 1, 2014, one business property tax credit is available to each property unit made up of property assessed as commercial property, industrial property, or railway property.

**80.30(3) Application for credit.**

a. Notwithstanding paragraph 80.30(3) “b,” for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2014, the claim for credit shall be received in the office of the applicable city or county assessor not later than January 15, 2014.

b. For a business property tax credit against property taxes due and payable during fiscal years beginning on and after July 1, 2015, no business property tax credit shall be allowed unless the first

application for business property tax credit is signed by the owner of the property or the owner’s qualified designee and received in the office of the applicable city or county assessor on or before March 15 preceding the fiscal year during which the credit is claimed. For example, the first application for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2016, must be received in the office of the applicable city or county assessor on or before March 15, 2016.

c. A claim filed after the filing deadlines set forth in paragraphs 80.30(3)“a” and 80.30(3)“b” will be applied against property taxes due and payable for the following year.

d. Once filed, the claim for credit is applicable to subsequent years, and no further filing shall be required as long as the parcel or property unit satisfies the requirements of the credit. If the parcel or property unit ceases to qualify for the credit, the owner shall provide written notice to the assessor by the date for filing claims in paragraph 80.30(3)“b” following the date on which the parcel or property unit ceases to qualify for the credit. When all or a portion of a parcel or property unit that is allowed a credit is sold or transferred or ownership otherwise changes, the buyer, transferee, or new owner who wishes to receive the credit shall refile the claim for credit. When a portion of a parcel or property unit that is allowed a credit is sold or transferred or ownership otherwise changes, the owner of the portion of the parcel or property unit for which ownership did not change shall refile the claim for credit.

e. In the event March 15 falls on either a Saturday or Sunday, applications for the business property tax credit may be received in the office of the applicable city or county assessor the following Monday.

f. In the event March 15 falls on a state holiday, applications for the business property tax credit may be received in the office of the applicable city or county assessor the following business day.

g. For assessment years 2013, 2014, and 2015, Table 1 shows the applicable claim receipt deadlines and the taxes toward which the claim applies.

Table 1

	Assessment Year 2013	Assessment Year 2014	Assessment Year 2015
Claim Receipt Deadline	January 15, 2014	March 16, 2015*	March 15, 2016
For Taxes Payable	September 2014 & March 2015	September 2015 & March 2016	September 2016 & March 2017

\* March 15, 2015, falls on a Sunday.

h. An assessor may not refuse to accept an application for business property tax credit. Assessors shall remit claims for credit to the county auditor with a recommendation to allow or disallow the claim. If it is the opinion of the assessor that a business property tax credit should not be allowed, the assessor’s recommendation to the county auditor shall include in writing the reasons for recommending disallowance.

i. Upon receipt from the assessor of the claims and recommendations, the county auditor shall forward the claims to the board of supervisors. The board shall allow or disallow the claims. If the board disallows a claim for credit, the board shall send written notice by mail to the claimant at the claimant’s last-known address. The written notice shall state the reasons for disallowing the claim for the credit. Notwithstanding the foregoing, the board is not required to send notice that a claim for credit is disallowed if the claimant voluntarily withdraws the claim.

**80.30(4) Appeals.**

a. *Initial appeal.* Any person whose claim is disallowed by the board of supervisors may appeal that action to the district court of the county in which the parcel or property unit is located. Notice of appeal must be given to the county auditor within 20 days from the date on which the notification of disallowance was mailed by the board of supervisors.

*b. Reversal.* If the board of supervisors' disallowance of the claim for credit is reversed upon appeal, the credit shall be allowed on the applicable parcel or property unit. The director of revenue, the county auditor, and the county treasurer shall provide the credit and change their books and records accordingly. If the claimant has paid one or both of the installments of the tax payable in the year or years in question, the county treasurer shall remit the amount of the credit to the claimant and submit a request to the department for reimbursement from the business property tax credit fund. The amounts payable as credits awarded on appeal shall be allocated and paid from the balance remaining in the business property tax credit fund established in 2013 Iowa Acts, Senate File 295, section 4.

**80.30(5) Audit.**

*a. Authority and period.* The director of revenue may audit any credit provided under 2013 Iowa Acts, Senate File 295. However, the director shall not adjust a credit allowed more than three years from October 31 of the year in which the claim for credit was filed.

*b. Recalculation or denial.* If an audit reveals that the amount of the credit was incorrectly calculated or that the credit should not have been allowed, the director shall recalculate the credit, if applicable, and notify both the claimant and the county auditor of the recalculation and the reasons it is being made.

*c. Recapture.* If the credit has already been paid, the director shall notify the claimant, the county treasurer, and the applicable assessor of the recalculation or denial of the credit. If the claimant still owns the parcel or property unit for which the credit was claimed, the county treasurer shall collect the tax owed in the same manner as other due and payable property taxes are collected. If the claimant no longer owns the parcel or property unit for which the credit was claimed, the department may recover the amount of tax owed by filing a lien under Iowa Code section 422.26 or by issuing a jeopardy assessment under Iowa Code section 422.30. Upon collection, the amount of the erroneously allowed credit shall be deposited in the business property tax credit fund.

*d. Appeal of recalculation or denial.* The claimant or the board of supervisors may appeal any decision of the director to the state board of tax review. The state board shall review the director's decision in accordance with Iowa Code section 421.1, subsection 5. The claimant, the board of supervisors, and the director may all seek judicial review of the state board of tax review's decision pursuant to the provisions of Iowa Code chapter 17A.

*e. False claim and penalty.* Any person who makes a false claim for the purpose of obtaining a credit or who knowingly receives the credit without being legally entitled to it is guilty of a fraudulent practice. The claim for a credit for such a person shall be disallowed, and the director shall send a notice of disallowance. If the credit has been paid, the amount shall be recovered in the manner described in paragraph 80.30(5) "c."

**80.30(6) Property eligible for credit.**

*a. Eligible parcels.*

(1) Except as provided in subrule 80.3(8), parcels that are part of a property unit that is classified and taxed as commercial property, industrial property, or railway property under Iowa Code chapter 434 are eligible for the business property tax credit.

(2) Parcels that, in part, would satisfy the requirements for classification as multiresidential property as defined in 2013 Iowa Acts, Senate File 295, section 28, where the primary use of the building is not for human habitation with three or more units and the building is not otherwise classified as a residential property are eligible for the business property tax credit against valuations established prior to January 1, 2015.

*b. Eligible property units.* Except as provided in subrule 80.30(8), only property units made up of property assessed and taxed as commercial property, industrial property, or railway property under Iowa Code chapter 434 are eligible for the business property tax credit. To be eligible as a property unit, all of the parcels that make up the property unit must be:

- (1) Located within the same county;
- (2) The same property classification;
- (3) Owned by the same person;
- (4) Contiguous as defined in subrule 80.30(1); and

(5) Operated by that person for a common use and purpose.

**80.30(7) Common use and purpose.** Whether parcels are operated for a common use and purpose depends on all the facts and circumstances of each set of parcels. The following nonexclusive examples illustrate common use and purpose.

EXAMPLE 1. ABC Properties is in the business of building, owning, leasing, and managing large retail spaces. ABC builds and owns a large shopping mall that covers contiguous parcels, all of which are located within the same county. Although the retail establishments that lease retail space in the shopping mall offer different products and services, the shopping mall is owned and operated by ABC for the common use and purpose of being a lessor. Thus, the parcels that make up the mall are eligible as a single property unit.

EXAMPLE 2. John's LLC owns four commercial parcels located within the same building, and they are, therefore, contiguous as defined in subrule 80.30(1). John's owns and operates two parcels as a beauty parlor. John's rents the other two parcels to a bicycle shop. The four parcels, together, do not have a common use and purpose. However, the two parcels used by John's as an owner-operator of the beauty parlor business are operated with the common use and purpose of providing beauty services and are eligible as one property unit. The two parcels that John's rents to the bicycle shop are operated with the common use and purpose of being rented out for profit as a landlord and are eligible as a second property unit.

**80.30(8) Property ineligible for credit.** All of the following are not eligible to receive a business property tax credit or to be part of a property unit that receives the business property tax credit:

a. Property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code, as amended, and that is subject to assessment procedures relating to Section 42 property under Iowa Code section 441.21, subsection 2, for the applicable assessment year.

b. Mobile home park as defined in Iowa Code section 435.1.

c. Manufactured home community and land-leased community as defined in Iowa Code sections 335.30A and 414.28A and 2013 Iowa Acts, Senate File 295, section 28.

d. Assisted living facility as defined in Iowa Code section 231C.2. Assisted living facility also includes:

(1) A health care facility as defined in Iowa Code section 135C.1;

(2) A child foster care facility under Iowa Code chapter 237; or

(3) Property used for a hospice program as defined in Iowa Code section 135J.1.

e. Property primarily used or intended for human habitation with three or more separate dwelling units.

**80.30(9) Application of credit.**

a. A person may claim and receive one business property tax credit for each eligible parcel unless the parcel is part of a property unit for which a credit is claimed.

b. A person may claim and receive one business property tax credit for each property unit.

c. A credit approved for a property unit shall be allocated to the several parcels within the property unit in the proportion that each parcel's total amount of property taxes due and payable bears to the total amount of property taxes due and payable on the property unit.

d. The classification of property used to determine eligibility for the business property tax credit shall be the classification of the property for the assessment year used to calculate the taxes due and payable in the fiscal year for which the credit is claimed.

e. Once filed and allowed, the credit shall continue to be allowed on the parcel or property unit for successive years without further filing of an application unless the parcel or property unit ceases to qualify for the credit under Iowa Code chapter 421C.

f. When all or a portion of a parcel or property unit is sold or transferred or ownership otherwise changes, the new owner must reapply for the credit. The owner of the portion of a parcel or property unit that did not change shall also reapply for the credit.

g. The following noninclusive examples illustrate the application of the business property tax credit under various circumstances.

EXAMPLE 1. On February 13, 2015, Mr. Jones files with his county assessor his application for the business property tax credit for taxes due and payable in the fiscal year beginning July 1, 2015. The property that Mr. Jones claims is eligible for the credit is a single parcel that is classified as commercial property. The property is not rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code. The property is not a mobile home park, manufactured home community, land-leased community, or assisted living facility nor is it primarily used or intended for human habitation with three or more separate dwelling units. Therefore, Mr. Jones' application should be approved as a credit against the taxes due and payable in the fiscal year beginning July 1, 2015.

EXAMPLE 2. Same facts as in EXAMPLE 1, but Mr. Jones files his application on March 17, 2015. Mr. Jones' application should be approved, but the credit will be against taxes due and payable in the fiscal year beginning July 1, 2016.

EXAMPLE 3. Davidoff LLC owns two parcels of land, both of which are classified as industrial property. Each parcel is being operated for a common use and purpose. The parcels are separated by a road. If Davidoff owns the property parcels to the middle of the road in fee simple title, the parcels are considered contiguous and would qualify as a unit, and Davidoff would be eligible for a single business property tax credit. If a third party, including the state, a municipality, or other government entity, owned the road in fee simple title, the parcels would not be considered contiguous, and Davidoff would be eligible for two separate business property tax credits.

EXAMPLE 4. In Oak County, Iowa, there is a wind farm with five turbines. The turbines sit upon five contiguous parcels of land. The land parcels are all classified as agricultural property and are owned respectively by Turbine LLC I, Turbine LLC II, Turbine LLC III, Turbine LLC IV, and Turbine LLC V. The five wind turbines are not considered a single property unit because, even though the parcels of land upon which the turbines sit are assessed and taxed separately from the turbines and those parcels also share a common boundary, the turbines are not all owned by the same person. The wind turbines would each be eligible for one business property tax credit.

EXAMPLE 5. In Madison County, Iowa, there is a wind farm that consists of four wind turbines that are taxed separately as permanent improvements to the land. All the wind turbines are owned by Windy LLC. The turbines sit upon four parcels of land that share a common boundary. Each parcel of land is owned by a different owner. The four wind turbines are contiguous because the wind turbines are taxed as permanent improvements to the land, they are situated upon four parcels of land that share a common boundary, and the land is assessed and taxed separately from the wind turbines. The four wind turbines qualify as a property unit and would be eligible for one business property tax credit.

**80.30(10) Calculation of credit.**

*a. Auditor certification.* On or before June 30 of each year, the county auditor shall certify to the department the following:

- (1) The claims allowed by the board of supervisors in that county;
- (2) The actual value, prior to the imposition of any applicable assessment limitations, of the parcels and property units for which credits were allowed in that county; and
- (3) The information applicable to the location of the parcels and property units.

*b. Department process and methodology.*

(1) Department of management information. The department shall obtain from the department of management tax district and applicable consolidated rates.

(2) Initial amount of actual value. For each parcel or property unit certified by the county auditor, the department shall calculate, for each fiscal year, an initial amount of actual value to use for determining the amount of credit for each such parcel or property unit that provides the maximum possible credit according to the credit formula and limitations prescribed by 2013 Iowa Acts, Senate File 295, section 5(5). The department shall also calculate the initial amount of actual value so as to provide that the total dollar amount of credits against the taxes due and payable in the fiscal year equals 98 percent of the moneys in the business property tax credit fund following the deposit of the appropriation for the fiscal year, including any interest or earnings that have been credited to the fund.

(3) Credit amount. The amount of the credit shall be calculated as follows:

Step 1. Determine the lesser of the actual value calculated in paragraph 80.30(10) “a” and the initial value calculated in subparagraph 80.30(10) “b”(2).

Step 2. Multiply the amount determined in Step 1 by the difference between the assessment limitation percentage applicable to the parcel or property unit under Iowa Code section 441.21(5) as amended by 2013 Iowa Acts, Senate File 295, section 18, and the assessment limitation applicable to residential property under Iowa Code section 441.21(4) as amended by 2013 Iowa Acts, Senate File 295, section 17. For purposes of this calculation, such difference shall be stated as a percentage.

Step 3. Divide the product of Steps 1 and 2 by \$1000.

Step 4. Multiply the quotient obtained in Step 3 by the consolidated levy rate or average consolidated levy rate per \$1000 of taxable value applicable to the parcel or property unit for the fiscal year for which the credit is claimed as certified by the county auditor under 2013 Iowa Acts, Senate File 295, section 5(5).

(4) Allocation to parcels. The business property tax credit approved for a property unit shall be allocated to the several parcels within the property unit in the proportion that each parcel’s total amount of property taxes due and payable bears to the total amount of property taxes due and payable on the property unit.

(5) Limitation on information. Notwithstanding the foregoing, the department’s calculations shall be based upon the certified information it has received by June 30 of each fiscal year. Any information, whether certified or uncertified, received after June 30 of each fiscal year will not be included in the department’s credit calculations for the applicable fiscal year.

This rule is intended to implement 2013 Iowa Acts, Senate File 295.